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Montana  
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January 5, 2016

[Complainants]

[School District Superintendent]

**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT for** In the Matter of \*\*\* Case # 2015-04, Alleged Violations of the Individuals with Disabilities Education Act (IDEA).

This is the Final Report pertaining to the above-referenced state special education complaint (Complaint) filed pursuant to the Administrative Rules of Montana (ARM) 10.16.3662. \*\*\* (Complainants) filed the Complaint on behalf of their child, \*\*\* (Student), a student in \*\*\* School District (District). Complainants allege the District violated the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulations at 34 CFR Part 300 and ARM 10.16.3007 et seq. by allegedly:

- (1) failing to complete transition assessments to properly write postsecondary goals and transition services to meet those goals;
- (2) failing to comprehensively evaluate Student in all areas of disability including assistive technology and communication;
- (3) denying Student a free appropriate public education (FAPE) because Student's proposed IEPs dated October 2, 2014 and subsequent amendments were not reasonably calculated to provide educational benefit; and
- (4) planning for Student to graduate due to credits earned for Student's classes in basic skills and adaptive physical education (PE) and substantially meeting Student's IEP goals at the end of this school year.

**A. Procedural History**

1. On November 6, 2015 the Montana Office of Public Instruction (OPI) received the special education Complaint signed by the Complainants.
2. On November 17, 2015 the Office of Public Instruction's Early Assistance Program (EAP) concluded the matters alleged in the Complaint are not able to be resolved through the EAP at this time and sent a Request for Written Response to the District. The Complaint proceeded to investigation.
3. An extension to file a Response was granted to the District. The OPI received the District's written Response to the Complaint on December 3, 2015. The Complainants received a copy of the District's Response on December 9, 2015.

4. An appointed investigator conducted interviews with: the Complainants, Complainants' advocate, the District's special education executive director, special education coordinator, program specialist for special education, the school principal, Student's speech and language pathologist, Student's current case manager, Student's previous case manager, and four of Student's current or former special education teachers.

## **B. Legal Framework**

The OPI is authorized to address alleged violations of the IDEA and Montana special education laws through this special education state complaint process as outlined in 34 CFR §§ 300.151-153 and ARM 10.16.3662, which occurred within one year prior of the date of a complaint. Pursuant to 34 CFR §§ 300.151-153 and ARM 10.16.3662, all relevant information is reviewed and an independent determination made as to whether a violation of federal or state statute, regulation or rule occurred.

## **C. Findings of Fact**

### **Background**

1. Complainants have standing to file this Complaint pursuant to ARM 10.16.3661.
2. Student was 17 years old at the time the Complaint was filed, but has recently turned age 18. Complainants have obtained legal guardianship of Student.
3. Student has received special education services from the District since preschool.
4. Student does not attend any regular education classes but attends basic skills and adaptive PE classes at the high school.
5. Student had an annual IEP meeting on October 2, 2014. Student's mother signed the IEP with exceptions on December 2, 2014. IEP meetings were held on February 5, 2015 and April 7, 2015. The IEP was amended and signed with exceptions on April 9, 2015.
6. Student had an annual IEP meeting on October 2, 2015. Student's parents signed the IEP with exceptions on October 20, 2015.

### **Transition**

7. There is no documentation Student's case manager conducted informal transition assessments prior to December 17, 2014. Student's October 12, 2012, October 13, 2013 and October 2, 2014 IEPs do not list the results of age appropriate transition assessments or what was learned from those assessments.
8. Student's case manager performed the Enderle-Severson transition assessment on December 17, 2014.
9. Student's case manager performed an Independent Living Assessment on February 5, 2015.
10. Student's parents conducted the Enderle-Severson transition assessment in November of 2015.
11. Student's Postsecondary goals were the same on the October 12, 2012, October 13, 2013 and October 2, 2014 IEPs.
12. Student's transition services have been the same since the October 12, 2012 IEP.
13. On December 2, 2014, Complainants objected to the October 2, 2014 IEP because Student had not been assessed for necessary transition services. On March 17, 2015 Student's parents submitted discussion items dated March 17, 2015 for Student's next IEP meeting and disagreed with the transition assessments that had been provided to date. The parents requested additional assessments and consultation with outside individuals on transition. The school did not follow up on these requests.

Complainants' objections to the transition assessments continued through the beginning of this school year with exceptions to the October 2, 2015 IEP.

#### Communication

14. Student's last reevaluation was November 27, 2012. The speech and language pathologist evaluated Student in the area of communication. The results indicated Student was unable to complete a standardized speech and language evaluation. A nonverbal checklist was used and it was determined student could, "... demonstrate pleasure and discomfort, use a basic greeting "hi" make a choice between 2 items when presented icons, demonstrate basic cause and effect using a switch during computer activity, and daily communication."

15. On December 19, 2014 the speech and language pathologist conducted a communication matrix on Student.

16. Student does not consistently communicate with an iPad or by choosing picture symbols. Student uses gestures, body language and vocalizations to communicate with others.

17. The speech and language goals for Student attached to the September 29, 2000 speech/language progress report indicate Student has been working on discriminating between two pictures since 2000.

#### Assistive Technology Evaluation

18. Student has not been assessed for assistive technology since November 29, 2001.

19. The "consideration of special factors" portion of Student's IEPs in effect over the past two school years indicate Student requires assistive technology devices and services.

20. Student has been working on communication with an iPad with a private speech therapist. The District began using the iPad with Student at the Complainants' request approximately four years ago.

#### Progress

21. Student's teachers have been tracking progress on Student's goals and indicate Student is making some progress.

22. There is no indication Student has met any of the goals on the progress reports from 2013-2014 or 2015-2016 until after the time the complaint was filed.

#### Graduation

23. Student is currently in the fourth year of high school. Student is on track to graduate this year pursuant to District policy by earning enough credits to graduate.

24. Student is on an alternative course of study as set out by Student's IEP team.

25. Prior written notice dated 10/8/15 was given to Complainants refusing their request for a fifth year of high school. "[Student] is currently on track to graduate in May 2016 based on earning credits toward graduation and substantially meeting [Student's] IEP goals." "[Student] substantially met [Student's] measurable annual goals on [Student's] previous IEP and based on the current data and assessments will meet district requirements for graduation in May 2016 in both credits earned and substantially meeting IEP goals as reported in the 15-16 IEP."

### **D. Analyses and Conclusions**

#### **Issue 1: Did the District err when it did not complete adequate transition assessments of Student to write postsecondary goals and provide transition services to meet those goals?**

Complaints allege the District did not appropriately assess Student in transition prior to the time of the October 2, 2014 annual IEP meeting and therefore was unable to properly write postsecondary

goals and provide transition services to meet those goals in violation of 34 CFR § 300.320(b).<sup>1</sup> “Congress in the IDEA placed ‘added emphasis on transition services so that special education students leave the system ready to be full productive citizens, whether they go on to college or a job.’” *Carrie I. v. Department of Education, State of Hawaii*, 869 F.Supp.2d 1225, 1244 (D. Haw. 2012) citing 150 Cong. Rec. S11653-01, S11656 (Nov. 19, 2004) (Conf. Rep. accompanying H.R. 1350) (Statement of Sen. Dodd).

Pursuant to 34 CFR §300.320(b), beginning no later than the first IEP to be in effect when the child turns 16, and updated annually, the IEP must include appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills. The IDEA does not specify the type of transition assessments to be conducted. Specific transition assessments used to measure post-secondary goals are dependent upon the individual needs of the child and determined on an individual basis. *U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. 46667 (August 14, 2006).

“Results of Age-Appropriate Transition Assessments” are listed on Student’s IEP. Student’s October 12, 2012, October 3, 2013 and October 2, 2014 IEP read as follows:

Area Assessed	Results of Transition Assessment listed on 2014 IEP
Training	[Student] attends a self-contained classroom wherein [Student] works on self-help, social and communication skills.
Education	[Student] has good attendance, [Student] works on social, self-help and fine motor skills.
Employment	[Student] works well with hand over hand activities.
Independent Living	[Student] currently lives at home with [Student’s] mom and dad.

The District alleges the case manager conducted informal assessments on Student to obtain the results listed above. The District did not provide any record of the informal assessments and the above results do not state if, or how, Student was assessed or what was learned from any assessment. The results do not focus on Student’s strengths, interests or preferences. The Complainants did not fully understand what transition assessments were until they obtained a parent advocate in the fall of 2014 after the October 2, 2014 IEP meeting. At that time they realized Student may not have been properly assessed and disagreed with the transition portion of the IEP because of lack of assessments. On December 2, 2014, the Student’s mother signed the October 2, 2014 IEP with exceptions. The exceptions state that Student had not been properly assessed to determine appropriate transition goals and services. In response, on December 17, 2014, the District performed an Enderle-Severson Transition Rating Scale and an Independent Living Assessment on February 5, 2015. On February 5, 2015, the team met to discuss the Complainants’ noted exceptions to the IEP. The results of the transition assessments were updated to state Student would need full support for any employment, recreation, home living, or access to the community. The results of both assessments provide very little information. The Complainants provided the District with a list of discussion items on March 17, 2015, stating they still did not feel the team had enough information through the assessments the District had performed because the assessments did not provide much useful information. The Complainants attached their

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<sup>1</sup> The timeframe of this Complaint is November 6, 2014 to November 6, 2015. However, the IEP dated October 2, 2014 and signed on December 2, 2014 with exceptions is at issue.

own list of skills they thought Student could do that were not indicated on the assessment. "...we would request that the IEP team use more detailed information assessments like the Functional Independence Skills Handbook. Also, we would like the team to consult with Doug Doty of the OPI Montana Autism project and with Ellen Condon of the Rural Institute in Missoula." The IEP team met again on April 14, 2015, and the parents signed the IEP with exceptions on April 14, 2015. Complainants restated their concerns regarding transition assessments.

The concerns regarding transition continued through the beginning of this school year. Student's annual IEP meeting was held on October 2, 2015 and Complainants again signed the IEP with exceptions on October 20, 2015. The notes to the IEP indicate the District's position on transition assessments, "Parents are requesting additional transition assessments to be conducted. The district's current stance is that they have adequate transition services conducted. The district will explore if there are any other assessments that are appropriate for [Student]." One of the Complainant's exceptions was "No assessments specific to [Student] have been done to determine [Student's] skills and measure what [Student] can do without assistance and what [Student] can do with assistance and the current level of that assistance. The transition goals are not measurable. The transition services are not appropriate without assessments to determine [Student's] needs in the areas of training, employment, community experiences and daily living skills."<sup>2</sup>

The District alleges the delay of implementation in the areas of disagreement was due to the parents. However, the parents were the ones who brought lack of transition assessments to the attention of the District. The appropriateness of the limited information gathered on transition assessments was questioned by the parents and the District did not respond directly to their request for a specific assessment or outside assistance until after this Complaint was filed. While the substance of the postsecondary goals may be appropriate for Student, failure to perform adequate transition assessments make it difficult for an IEP team to accurately determine whether the goals are adequate. Additionally, the IEP in effect after a child's 16<sup>th</sup> birthday must contain transition services including courses of study needed to assist students in reaching their post-secondary goals. 34 CFR §300.320(b)(2). A review of the IEP's transition services (which have been the same since 2012) indicate they may be appropriate for Student, but because appropriate transition assessments were not performed, the determination of necessary services was speculative.

Student is nonverbal and Student's ability to communicate is very limited, making assessments of Student more difficult. Traditional methods of assessment do not work for Student. The District has a responsibility to attempt to find and use assessments effective in creating appropriate post-secondary goals and services for Student. See *Carrie I.*, 869 F.Supp.2d at 1245; *Dracut v. Bureau of Special Education Appeals of Mass. Dept. of Elementary and Special Ed.*, 737 F. Supp.2d 35, 50-51 (D. Mass. 2010); *Forest Grove School District v. Student*, 63 IDELR 163, 25 (D. Ore. 2014) (failure to provide measurable post-secondary goals based on timely transition assessments is a violation of IDEA). **The**

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<sup>2</sup> Student's 2013-14 post-secondary goals are as follows:

1. After graduation [Student] will continue to work on communicating [Student's] wants and needs by indicating a choice between two options.
2. After graduation, [Student] and a caregiver will work with DD Services to determine employment options.
3. After graduation [Student] will continue to work on [Student's] self-help skills to assist caregivers in [Student's] feeding, toileting, and hygiene, etc.

These goals are not measurable and list a process, not a defined outcome.

**District's failure to perform timely age appropriate transition assessments violated the transition requirements of 34 CFR §300.320(b).**

**Issue 2: Did the District err by failing to comprehensively evaluate student in all areas of disability including assistive technology and communication?**

The Complainants allege the District should have evaluated student in all areas of disability and the District erred by not properly evaluating student in the areas of communication and assistive technology. Under the IDEA the District has a responsibility to make sure a student is assessed in all areas related to the suspected disability or disabilities. 34 CFR § 300.304(c)(4). Pursuant to 34 CFR § 300.324(b)(2) an IEP team must consider special factors when reviewing the student's IEP. Specifically, the IEP team must consider the communication needs of a student and consider whether the student needs assistive technology devices and services. 34 CFR § 300(a)(2)(iv) and (v). Further, if assistive technology devices are found to be necessary the district must make the devices available to the student. 34 CFR § 300.105(a). All of Student's IEPs in effect over the timeframe of this complaint indicated Student has communication needs and requires assistive technology.

Communication

Communication is continually listed as a concern by staff and parents on Student's IEPs. Complainants have concerns regarding Student using several modes of communication to communicate basic wants and needs and not developing a consistent and effective mode of communication that can be used after high school. Student is nonverbal and communicates at school most effectively using gestures, vocalizations, and body language, which necessitates familiarity with Student before understanding what Student is trying to communicate. Complainants would like Student to use an iPad more to communicate effectively with individuals who do not know Student well. District records indicate the school has been using an iPad with Student since at least 2012. Student's present levels of academic achievement and functional performance (PLAAFP), progress documentation submitted during the investigation, and interviews conducted reveal a common concern with Student's communication abilities regarding basic wants and needs. Student's PLAAFP on the IEP dated October 2, 2015, indicates "[Student] does not identify familiar objects by touching a named object from an array of two items." "Given the clue '[g]ive me.' when 2 objects are placed on a table, [Student] consistently chooses the item on a certain side rather than the named item." Student is unable to discriminate between objects, pictures or icons with consistent accuracy on an iPad unless it is to select Student's favorite activity (music), for which Student's baseline is 70% accuracy.

Student's goal on the October 12, 2012 IEP for communicating basic needs states: "[Student] will communicate basic wants and needs using a variety of communication modes (low tech pictures, iPad, gestures, body language) across all school settings at least 80% of opportunities as measure by staff data/observation." The same goal was on the October 3, 2013 IEP. On the October 2, 2014 IEP the goal was the same except for the addition of "...with 50% or fewer verbal/physical cues from staff." This goal was broken down and expanded upon in subsequent amendments to which the parents did consent to on April 8, 2015. On the IEP dated October 2, 2015 the goal was reduced to "[Student] will increase ability to communicate basic wants and needs using a variety of communication modes (low tech pictures, iPad, gestures, body language) by 20% from baseline of 10% as measured by staff data/observation, with 50% or fewer verbal/physical cues from staff. Complainants indicated exceptions on the October 20, 2015 IEP for this communication goal as well as for the goal indicating Student will

intentionally make a choice between four items by pointing or activating an icon with at least 20% accuracy. Complainants also noted an exception with the communication PLAAFP stating it does not reflect Student's proficiency in each communication mode.

Student was last evaluated for communication during a reevaluation in 2012. The results indicated, "[Student] was unable to complete standardized speech and language evaluations. Results of the Nonverbal Checklist indicate [Student] is able to demonstrate pleasure and discomfort, use a basic greeting, 'hi' make a choice between 2 items with icons depicting the items, and demonstrate basic cause/effect using a switch during computer activity and daily communication." Further implications for educational planning included, "Student exhibits severe receptive and expressive language deficits compared to same age peers. [Student] has limited ability to communicate basic wants and needs using single switches, facial expressions, iPad and a few single words. "[Student] is unable to complete academic tasks mastered by same age peers. [Student] enjoys being with others and loves music. [Student] has the ability to use Pro Lo Quo as an augmentative system on [an] iPad for basic communicative functions such as a greeting and making choices." On December 19, 2014 a communication matrix was performed on Student. The information on the matrix demonstrates what communication skills Student is able to use. It is unclear how this information was used in either determining the PLAAFP or goals. It is noted Student's speech and language suggested goals for 2000-2001 are similar to current goals.

It is clear Student struggles with communication-related issues. It is also clear there is inconsistency and questions regarding what student is able to do with an iPad or other modes of communication. The 2012 evaluation seems to suggest Student can make a choice between two icons, but this is directly contrary to the PLAAFPs and also contradicts what was revealed in the interviews with district staff and what was provided in the data compiled by the speech and language pathologist. In addition, essentially the same goal for communicating basic needs has been worked on since 2012 but recently made easier. Student's lack of an effective means to generally communicate is obvious and should have triggered a more informative evaluation of Student's communication needs. **The District violated 34 CFR 300.304(c)(4).**

#### Assistive Technology

The IDEA defines an assistive technology device as "any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." 34 CFR § 300.5. An assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. 34 CFR § 300.6. "Each public agency must ensure that, as part of its Part B educational evaluation when warranted by the child's suspected disability, it assesses, in accordance with the evaluation requirements of 34 CFR 300.532, the student's functional capabilities and whether they may be increased, maintained, or improved through the use of assistive technology devices or services... The evaluation should provide sufficient information to permit the IEP team to determine whether the student requires assistive technology devices or services in order to receive FAPE. (*Letter to Fisher*, 23 IDELR 565, OSEP, 1995).

The District asserts in their response: "the District indicated [Student] was in need of assistive technology to provide communication apps for [Student's] iPad and for [Student's] instruction. However, the parents have not previously requested an assistive technology assessment." Further, the District states an evaluation is not necessary in order to add assistive technology to a student's programming. However, the investigation revealed some teachers did not feel

Student had the ability to effectively communicate with the iPad. Student's use of the iPad to make choices at school is inconsistent unless it is for favorite songs. The District evaluated Student for assistive technology on November 29, 2001. However, the 14 year old evaluation was unknown to most district staff interviewed and is not helpful with regards to new assistive technology that may benefit Student. The use of the iPad was at Complainants' request, because Student was using it in private speech therapy. There may be other forms of assistive technology necessary to provide student FAPE.

Because the IEP team considered Student to have assistive technology needs, the District was obligated to ensure assistive technology devices and/or services were made available for Student's special education, related services, and supplementary aids and services. 34 CFR §300.105(a). The IEP team identified assistive technology needs, but the District failed to take the next step to appropriately determine what assistive technology device or services Student needed in order to receive FAPE. **The District therefore violated 34 CFR § 300.105 related to Student's assistive technology needs.**

**Issue 3: Did the District deny Student FAPE because Student's IEP dated October 2, 2014 and subsequent amendments were not reasonably calculated to provide educational benefit?**

Complainants allege Student's October 2, 2014 IEP and subsequent amendments were not reasonably calculated to provide Student with educational benefit to provide FAPE. Specifically, Complainants allege FAPE has been denied in the areas of assessment and evaluation, transition goals and services, communication and the general lack of progress prior to the annual IEP meeting in October of 2014. The allegation regarding general lack of progress prior to October of 2014 goes beyond the one year look back of this state complaint and will not be addressed in this Final Report. ARM 10.16.3662(2)(a).

FAPE means special education and related services that:

- (a) are provided at public expense, under public supervision and direction, and without charge;
- (b) meet the standards of the state educational agency;
- (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) are provided in conformity with an individualized education program (IEP).

34 CFR §300.17. The proper standard to determine whether a student with a disability has received FAPE, is the "educational benefit" standard. *J.L. v. Mercer Island School Dist.*, 592 F.3d 938,951 (9<sup>th</sup> Cir. 2010). The district must confer at least "some educational benefit" on students with disabilities. *Id.* This standard is referred to as "a basic floor of opportunity" not a "potentially maximizing education." *Id.* at 947 citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 197 (1982). "A procedural violation denies a free appropriate public education if it results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *Id.* at 953.

Student was not timely assessed for transition and was not properly evaluated in the areas of communication and assistive technology as discussed above. The District did not take the necessary steps to identify Student's current abilities resulting in a deprivation of educational benefit and loss of educational opportunity. Given the significance of procedural and substantive violations set forth above, the October 2, 2014 IEP and subsequent amendments were not reasonably calculated to allow



Student to receive educational benefit and the **District denied Student FAPE in violation of 34 CFR §300.17.**

**Issue 4: Did the District err by stating Student is on track to graduate due to credits earned for classes in basic skills and adaptive PE and substantially meeting IEP goals at the end of this school year?**

Student is a senior in high school this year. The District asserts, pursuant to District policy, Student is on track to graduate based on credits earned while pursuing an alternative course of study as set out by Student's IEP team. The District also asserts Student is substantially meeting the goals established in Student's IEP. During interviews District staff indicated the belief that, pursuant to District policy, students are not required to meet IEP goals to graduate if they obtain the number of credits necessary to graduate<sup>3</sup>.

Minimum graduation requirements are set out by the Montana Board of Public Education (ARM 10.55.905). The rules specify that "[a] student eligible to receive special education services as identified under IDEA and who has successfully completed the goals identified on an individualized education program for high school completion shall be awarded a diploma." ARM 10.55.805(4). Districts are required to set out how a student with an IEP will be assisted in meeting the graduation requirements in their IEP through specially designed instruction. Pursuant to ARM10.16.3345, a district's responsibility for promotion of a student with a disability is as follows:

- (4) A student with disabilities shall be promoted or retained according to local educational agency criteria unless waived in the student's IEP.
- (5) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation from high school.
  - (a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study.
  - (b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP.<sup>4</sup>

Student's IEP does not indicate an alternative course of study. However, the investigation revealed all of the graduation requirements set out by the district policy were waived by the IEP team and replaced with only basic skills and adaptive PE classes. District staff indicated Student has passed all classes and received credit due to attendance and participation. Passing classes has not been based on meeting goals in Student's IEP.

The District gave Complainants prior written notice dated October 8, 2015, refusing their request for a fifth year of high school. "[Student] is currently on track to graduate in May 2016 based on earning credits toward graduation and substantially meeting [Student's] IEP goals. ... [Student] substantially met [Student's] measurable annual goals on [Student's] previous IEP and based on the current data and assessments will meet district requirements for graduation in May 2016 in both credits earned and substantially meeting IEP goals as reported in the 15-16 IEP." The IEP notes from the meeting that took place on February 5, 2015, further indicate the District feels Student should graduate based on course credit. "From the district IEP point of

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<sup>3</sup> The District policy states, "For students with disabilities, the IEP team may waive specific accreditation standards and prescribe an alternative course of study. Those students who successfully complete the goals identified on an individual education program (IEP) shall be eligible for graduation and be awarded a diploma."

<sup>4</sup> The obligation for a district to provide FAPE ends when a student graduates high school with a regular high school diploma. 34 CFR § 300.102(a)(3)(i).

view, [Student] is on track with credits to graduate. Also, if we look at [Student's] IEP goals as a basis for graduation, we would determine that during [Student's] senior year if [Student] were on track to graduate based on [Student's] goals or if we needed to reevaluate and/or make a new plan for [Student] to graduate with a goal-based diploma.”

In Montana, all students ages 3 to 18 are entitled to FAPE. ARM 10.16.3121(1). Student is 18 years of age and will not turn 19 years old until the next school year. Although the intent of the District is for Student to graduate due to credits earned, a student must “successfully” meet their IEP goals to graduate if they are not meeting the district’s requirements as set out for all children. ARM 10.16.3345.

Contrary to what was stated in the District’s October 8, 2015 Prior Written Notice, although staff progress reports state Student is making progress or is expected to meet goals, review of Student’s progress reports for the past couple of school years indicates Student has not actually met any goals. **Pursuant to ARM 10.16. 3121 and 10.16.3345 if Student does not successfully meet IEP goals this year through an IEP reasonably calculated to provide educational benefit to Student, Student would be entitled to continue school in the district.**

#### **E. Disposition**

The District is ORDERED to take the following actions:

1. The District shall promptly arrange for special education staff training by the OPI in **identifying and performing adequate assessments, transition assessments and services, identification of communication needs and how to provide adequate and effective assistive technology devices and services** with emphasis on cognitive delay. The training shall be completed by **March 5, 2016** with verification sent to the Dispute Resolution office.
2. The District shall appropriately assess Student in the area of transition by **March 5, 2016** with verification sent to the Dispute Resolution office. The IEP team shall meet and determine if the additional transition assessments recently conducted by the District’s occupational therapist are sufficient or if other assessments are necessary to develop appropriate post-secondary goals and transition services.
3. The District shall reevaluate student in the areas of communication and assistive technology and any other areas the IEP team determines necessary by **March 5, 2016** with verification sent to the Dispute Resolution office.
4. The District shall ensure the IEP team drafts an adequate IEP in conformance with this Final Report. The IEP shall be submitted to the Dispute Resolution office for review and approval no later than **March 30, 2016**.
5. The District shall offer special education and related services adequate to compensate for the failure to provide Student a FAPE from November 6, 2014 to November 6, 2015. Compensatory services shall include compensatory education for Student in keeping with this Final Report and the results of the reevaluations and transition assessments. After consultation with Student’s IEP team, the District shall submit a plan for compensatory services to the OPI Dispute Resolution/EAP office **by March 30, 2015**.

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Ann Gilkey  
OPI Compliance Officer

c: Mandi Gibbs, Dispute Resolution/EAP Director  
Frank Podobnik, State Special Education Director  
Dale Kimmet, School Improvement/Compliance Unit Manger  
[Complainants' attorney]